

FEB 14 1967

No. 20643

In the

United States Court of Appeals
for the Ninth Circuit

GILA RIVER RANCH, INC., a corporation, and
RUSSELL BADLEY and CELESTE BADLEY,
Appellants,

vs.

UNITED STATES of AMERICA,

Appellee.

On Appeal from the United States District Court

Reply Brief Of
Russell and Celeste Badley

GUST, ROSENFELD & DIVELBESS
323 Security Building
Phoenix, Arizona 85004

*Attorneys for RUSSELL BADLEY and
CELESTE BADLEY, Appellants*

FILED

AUG 1 1966

WM. B. LUCK, CLERK



SUBJECT INDEX

	Page
Argument	1
Conclusion	2
Endorsement and Certificate	3

TABLE OF CASES

None

TABLE OF STATUTES

None

20643

In the

United States Court of Appeals

for the Ninth Circuit

GILA RIVER RANCH, INC., a corporation, and RUSSELL BADLEY and CELESTE BADLEY,	}	<i>Appellants,</i>
VS.		
UNITED STATES OF AMERICA,	}	<i>Appellee.</i>

On Appeal from the United States District Court

Reply Brief Of Russell and Celeste Badley

ARGUMENT

These appellants' Opening Brief sought either to have the remittitur reduced or removed as it affects Russell and Celeste Badley. The answering brief of the appellee, United States Government, fails to comment on the claim of this appellant and we assume the United States Government does not contest the Badley's position.

Our Opening Brief was not answered by Gila River Ranch, Inc., therefore we assume Gila does not contest our position.

We reiterate from our Opening Brief that the Government's

rights will not be impaired for the remittitur may still be collected from Gila. The final judgment reads as follows:

“It is ordered defendants Gila River Ranch, Inc. and Russell Badley and Celeste Badley, his wife, refund to the registry of this court \$153,125 The joint and several liability of the defendants Badley is limited to \$7,043.75 or 4.6% of the amount to be refunded.”

Gila does not assign as error the joint liability of the parties as set forth in the final judgment and at this point could not raise this issue. In fact Gila and the Badleys have settled their claims in a separate agreement. The only question raised in Gila's Opening Brief goes into the amount of the remittitur, i.e. whether or not interest is also to be added to the amount to be remitted. However, the judgment is joint and several and being set forth as such obligates Gila to pay the full sum of the remittitur whatever that full sum may eventually be. If the appellee does not wish to contest the Badley's position and if Gila cannot now contest our position having neither answered our brief or raised a question to the joint liability of the two appellants in its opening brief the issue should now be closed. Thus the Badleys stand on the arguments in their Opening Brief.

CONCLUSION

Therefore, for the reasons stated in our Opening Brief appellants Russell and Celeste Badley ask the court to modify the final judgment on the remittitur either reducing the Badley share of the remittitur or completely relieving the Badleys of any obligation to remit any sum whatsoever.

Respectfully submitted,

GUST, ROSENFELD & DIVELBESS

By FRED H. ROSENFELD

*Attorney for RUSSELL BADLEY and
CELESTE BADLEY, Appellants.*

Twenty copies of the foregoing mailed to the United States

District Court this 29th day of July, 1966.

Three copies of the foregoing mailed this 29th day of

July, 1966, to:

Edwin L. Weisl, Jr.
Assistant Attorney General
Washington, D. C.

Roger P. Marquis, Attorney
Department of Justice
Washington, D. C. 20530

Edmund B. Clark, Attorney
Department of Justice
Washington, D. C. 20530

Two copies of the foregoing mailed this 29th day of

July, 1966 to:

Mark Wilmer
Snell & Wilmer
400 Security Bldg.
Phoenix, Arizona

FRED H. ROSENFELD

FRED H. ROSENFELD

I hereby certify that in connection with the preparation of this brief I have examined Rules 18 and 19 of the United States Court of Appeals of the 9th Circuit and that in my opinion the foregoing brief is in full compliance with those rules.

FRED H. ROSENFELD

FRED H. ROSENFELD

